

## REMARKS

Applicant respectfully requests entry of the Amendment and reconsideration of the claims.

Claims 1-7, 9-12, 15-16, 18-24, 29-40, 42, 44-46, 48-54, 59-66, 68-74, 76, 81-85, 90-96, and 98-99 have been withdrawn. Applicant hereby requests rejoinder under MPEP § 821.04(a) of non-elected claims 1-7, 9-12, 15-16, 18-24, 29-40, 42, 44-46, 48-54, 59-66, 68-74, 76, 81-85, 90-96, and 98-99 upon allowability of claims 105-114, the elected claims of restriction Group I. Applicants also submit that new claims 115-129 read on the elected species.

Claims 8,13-14, 17, 35, 41, 43, 47, 67, 75, 86-89, 97, and 101-102 were cancelled in a preliminary amendment. Applicants reserve the right to pursue the subject matter of these claims in one or more continuation applications.

Claims 25-28, 55-58, 77-80, and 102 -104 are cancelled due to the restriction requirement. Applicants reserve the right to pursue the subject matter of these claims in one or more divisional applications.

Claims 105-114 have been amended. Support for the amendment can be found throughout the specification, including at Examples 7 and 8.

Claims 115-130 are new. Applicants submit the newly presented claims are supported throughout the specification including at page 10, lines 13-24; page 11, lines 3-7; and page 14, line 13 to page 16, line 12.. Additionally, this amendment is consistent with the restriction requirement of October 12, 2006, wherein the Examiner recited that Group I claims are "drawn to a polypeptide comprising a CDRH3 region."

### **Rejection under 35 U.S.C. § 112, Second Paragraph**

The Examiner rejects claims 105-114 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Applicants have amended claims 105, and 108-111 to address the rejection, rendering the rejection moot. Applicant respectfully requests removal of the rejections under 5 U.S.C. § 112, second paragraph.

### **Rejection under 35 U.S.C. § 102(b)**

The Examiner rejects claims 105-106 under 35 U.S.C. § 102(b) as allegedly being anticipated by each of Spinelli et al., (2000, *Biochemistry* 39:1217-1222) and Muyldermans et al. (2001, *Trends Biochem.* 26: 230-235). Applicants respectfully traverse these rejections.

Without acquiescing to the rejection and solely to expedite prosecution, claims 105-106 have been amended. Applicant asserts that neither Spinelli et al. nor Muyldermans et al. anticipate claims 105-106. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Both Spinelli et al. and Muyldermans et al. do not disclose a fusion protein comprising at least a portion of a phage coat protein fused to a binding polypeptide comprising a CDRH3 scaffold. Thus, both Spinelli et al. and Muyldermans et al. do not disclose each and every claim element, and thereby do not anticipate the instant claims. As such, Applicant respectfully requests removal of the rejections under 35 U.S.C. § 102(b).

### **Rejection under 35 U.S.C. § 103(a)**

The Examiner rejects claims 105-114 under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent Application Pub. No. 2004/0123343 (La Rosa et al.) in view of either of Spinelli et al. (2000) or Muyldermans et al. (2001). Applicant respectfully traverses this rejection.

To establish a *prima facie* case of obviousness, three criteria must be met--a suggestion or motivation to combine references, a reasonable expectation of success, and the prior art reference teaches or suggests all the claim limitations. MPEP §2143; *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991).

Applicant respectfully asserts that the art cited by the Examiner fails to teach or suggest all of the claim limitations as recited in amended claims 105-114. The La Rosa et al. publication fails to teach or suggest a fusion protein comprising at least a portion of a phage coat protein. As discussed above, neither Spinelli et al. nor Muyldermans et al. teach or suggest a fusion protein comprising at least a portion of a phage coat protein. Thus, the combination of these references does not disclose all of the elements of Applicant's claims. Without this the teaching or

suggestion of a fusion protein as claimed the Examiner has not established a *prima facie* case of obviousness.

Moreover, there would be no motivation to combine these references as the La Rosa reference is directed to plant sequences. There would be no motivation to combine a plant sequence with the camelid sequences of Spinelli or Muyldermans. La Rosa does not teach or suggest that such sequences can or should be combined with the sequences of the secondary references in order to obtain the fusion polypeptides of Applicant's claims. In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a).

### **Rejection under Obviousness-Type Double Patenting**

The Examiner rejects claims 105-114 under the judicially created doctrine of obviousness-type double patenting over claims 22 and 48 of copending Application No. 11/102,502 in view of Spinelli et al. (2000) or Muyldermans et al. (2001). Applicant acknowledges the Examiner's rejection for obviousness-type double patenting and requests that this rejection be held in abeyance until notice of allowable subject matter.

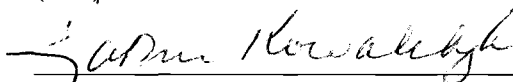
### **Summary**

Applicant submits that the claims of the present application are in condition for allowance and notification to that effect is earnestly solicited. The Examiner is invited to contact Applicant's representative at the telephone number listed below, if the Examiner believes that doing so will advance prosecution.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

Date: August 27, 2007



Katherine M. Kowalchuk

Reg. No. 36,848  
KMK:BRD:sab

